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In re Application of	:	
VERREAULT et al.	:	
U.S. Application No. 09/787,782	:	DECISION ON PETITION
PCT No.: PCT/CA99/00849	:	UNDER 37 CFR 1.47
Int. Filing Date: 21 September 1999	:	
Priority Date: 21 September 1998	:	
Attorney Docket No.: 2126.005	:	
For: CLEANSING TOWLETTE DISPENSER	:	

This decision is in response to "RENEWED PETITION UNDER 37 CFR 1.47(b)" filed 14 January 2001. In a decision dated 12 September 2001 the "PETITION UNDER 37 CFR 1.47(b)" filed 02 July 2001 was dismissed because: (1) applicant did not provide adequate proof that the inventor, Richard Verreault and Alain Jacques, refused to execute the application or could not be reached after diligent effort; (2) a statement of the last known address of the nonsigning inventor; and (3) applicant did not provide a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages.

BACKGROUND

On 21 September 1999, applicant filed international application no. PCT/CA99/00849 which claimed a priority date of 21 September 1998. A proper Demand was filed with the International Preliminary Examination prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was extended to expire 30 months from the international filing date, i.e., 21 March 2001.

On 21 March 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); English translation of international application; and an assignment.

On 23 April 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two-month time limit in which to respond.

On 02 July 2001, applicant filed "Petition under 37 CFR 1.47(b)"; a declaration and power of attorney executed declaration on behalf of the assignee -- Visimax USA, Inc.; and an assignment. The petition was dismissed in a decision dated 12 September 2001.

On 14 January 2002, applicant filed the present petition accompanied by: Supplemental Affidavit of Donald Conrad; Affidavit of Richard Verreault; Declaration executed by Donald Conrad; and Declaration executed by Richard Verreault.

DISCUSSION

Applicants have attached a declaration and power of attorney executed by co-inventor, Richard Verreault, therefore, a petition under 37 CFR 1.47(b) is not appropriate. Section 409.03(b) of the Manual of Patent Examining Procedure (M.P.E.P.) states, "[f]iling under 37 CFR 1.47(b) and 35 U.S.C. 118 is permitted when no inventor is available make application." Applicants' renewed petition under 37 CFR 1.47(b) is being treated as a petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1) and (3) have been satisfied.

Concerning Item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which the conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration."

A review of the present petition reveals that applicant has not satisfied the item (2) above, in that the applicant has not shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Alain Jacques. The supplemental affidavit of Donald Conrad states, "[o]n June 20, 2000 the necessary application papers were mailed to Mr. Jacques at his last know address . . . but no response has been received. Subsequent attempts to mail the declaration have been equally unsuccessful." The mailing of the Declaration and Power of Attorney is not considered a complete copy of the application paper (specification, including claims, drawings, and oath and declaration). Additionally, no documentary evidence to support the refusal or the attempt was provided in the petition.

In order to meet the requirements of 37 CFR 1.47(b) and Section 409.03(d) of the MPEP, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers were sent to Alain Jacques or his counsel and when such papers were sent. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc., should be supplied with the declaration.

Regarding Item(4), petitioner has provided a declaration executed by inventor Richard Verrault, on his behalf and on behalf of the non-signing joint inventor. However, the declaration is accompanied by an "Affidavit of Richard Verrault" which states, "[a]ttached hereto is a declaration on my behalf as a co-inventor." Additionally, the petition was also accompanied by a declaration executed by Donald G. Conrad on behalf of the missing inventor. Due to the inconsistencies, it is unclear if Mr. Verrault executed the declaration on behalf of himself or himself and the nonsigning joint inventor. Therefore, a newly executed declaration from Mr. Verrault is required or a statement from Richard Verrault indicating that he has executed the declaration on behalf of himself and on behalf of the nonsigning joint inventor, Alain Jacques.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Alain Jacques under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition filed under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO MONTHS from the mailing date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Legal Affairs Division of the PCT Legal Office.



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